Commission's decisions in this matter in any case, but it bears repeating that the facts of Cox's Virginia operations make Verizon's stated fears completely irrational with respect to Cox.

Next, allowing Verizon to charge Cox distance-sensitive rates while denying Cox the same opportunity essentially forces Cox to subsidize Verizon's services.[66] Such a result would be a caricature of the Commission's pro-competitive policies. The Commission should reject Verizon's proposal and affirm that as co-carriers Cox and Verizon are each entitled to charge distance-sensitive rates for use of their transport facilities.

Finally, Verizon's proposal in the November JDPL changes its previous language in this provision concerning the establishment of IPs. The new language gives Verizon the sole right to designate those points.[67] Because Verizon has provided no record support for this language, it should be dismissed summarily.[68] Even if Verizon had provided support, the new language is contrary to the Commission's determination that CLECs are permitted to choose their points of interconnection.[69] Consequently, the Commission cannot adopt it in this proceeding.

C. There Is No Basis for Verizon's Request for Collocation at Cox's Premises. [Issue I-3]

The Commission should reject Verizon's proposal that it be granted physical collocation rights at Cox facilities equal to those granted to Cox and other CLECs under Section 251(c)(6) of

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[66] Collins Rebuttal at 12-13.

[67] November JDPL, Network Architecture, at 26. This new language is subject to Cox's Objection, and Cox does not waive any of the rights asserted in the Objection by providing this discussion.

[68] To the extent that Verizon argues that this language is part of its implementation of GRIP or VGRIP, that cannot be correct. Verizon has stated repeatedly that Issue I-2 would be moot if Verizon prevails on Issue I-1. *See* Verizon Answer at 17 ("If the Commission adopts Verizon's proposal, outlined in its response to Issue I-1, then this issue is moot."); Albert/D'Amico Direct at 16, lines 13-14 ("Both of these issues become moot, however, if the Commission finds in favor of Verizon on Issue I-1."). Thus, the Verizon language for Issue I-2 and the Verizon language for Issue I-1 cannot both appear in the final agreement and, therefore, there is no reason to reconcile the two sets of provisions

[69] *Local Competition Order,* 11 FCC Rcd at 15608-09; 47 C.F.R. § 51.305(a).

the Communications Act.[70] Verizon's proposal would violate both the letter of the Communications Act and the policies underlying CLEC collocation rights. Moreover, Verizon has presented the Commission with no factual support for requiring Cox to provide reciprocal collocation rights.

First, Verizon's proposal is fundamentally incompatible with the Communications Act. Section 251(c)(6)'s collocation requirement applies only to ILECs, and Cox is not an ILEC.[71] Verizon admits that there is no legal basis for imposing reciprocal collocation obligations on competitive carriers like Cox.[72] Verizon further admits that ILEC collocation at CLEC facilities is "voluntary" for CLECs.[73] Nonetheless, Verizon maintains that the issue is appropriate for arbitration, and that the Commission may issue an arbitration award that, in effect, orders Cox to offer it reciprocal collocation rights.[74] Apparently, Verizon believes that the Commission can order through this arbitration any result that CLECs could voluntarily include in their interconnection agreements.[75] That belief is unsupported by the applicable law.

Under section 251(c)(6), collocation is an ILEC obligation. In addition, through Section 51.223 of its rules, the Commission has forbidden state commissions to impose ILEC obligations like collocation prior to the Commission's issuance of an order that a competitive carrier should be given the regulatory treatment of an ILEC.[76] No such order has issued with respect to Cox's Virginia operations, so to subject Cox to ILEC obligations in this proceeding would be entirely

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[70] 47 U.S.C. § 251(c)(6).
[71] *Id.* The Commission has held that non-ILECs are only required to provide interconnection under Section 251(a), and that they may, at their option, provide such interconnection "directly or indirectly." *Local Competition Order,* 11 FCC Rcd at 15991.
[72] Tr. at 1264-1265 (Albert).
[73] Tr. at 1265 (Albert).
[74] Albert/D'Amico Direct 2-29; Tr. at 1266.
[75] Tr. at 1264-65 (Albert).
[76] 47 C.F.R. § 51.233.

inappropriate. Further, the Virginia SCC has held that CLECs cannot be required to offer collocation.[77] Therefore, Verizon's request must fail.

Even if the Commission could grant Verizon's reciprocal collocation proposal, doing so would be entirely at odds with the policies embodied in competitive mechanisms like the ILEC collocation obligation. These mechanisms seek to foster competition by minimizing the cost of entry into local telephone markets for competitive carriers.[78] Verizon's proposal would neutralize this competitive spur by eliminating whatever cost-based benefit the exclusive collocation right gives CLECs like Cox, and by requiring them to make considerable new investments in infrastructure that may, if Verizon chooses not to exercise its collocation rights, go unused. The Commission should reject Verizon's invitation to redraw Congress's blueprint for promoting competition by granting it collocation rights that are not envisioned by the Communications Act.

Finally, Verizon has provided no facts to support its reciprocal collocation proposal. Under the current interconnection agreement, Verizon has the right to request collocation at Cox facilities if Cox offers collocation to another carrier.[79] Verizon has never seriously pursued such collocation, indicating that it is hardly the imperative that Verizon now suggests.[80] Nonetheless, Verizon argues that collocation is necessary to protect Verizon from potentially unreasonable

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[77] In Petition of MCI Telecommunications and MCI Metro Access Transmission Services of Virginia, Inc., 1997 S.C.C. Ann. Report 233 (Case No. PUC960113, May 8, 1997), the Virginia SCC decided that, "neither the Act, nor the FCC Order requires CLECs to offer collocation at their premises to incumbents. Therefore, MCI is not required to offer collocation at its premises to BA-VA." MCI filed an action with the United States District Court for the Eastern District of Virginia under 47 U.S.C. Sec. 252(4)(b) but this issue was not raised in that litigation by any party (including BA-VA). *See MCI Telecommunications Corp. v. Bell Atlantic-Virginia, Inc.*, 1998 U.S. Dist. LEXIS 17558 (July 1, 1998), *aff'd in part, rev'd in part, sub nom. AT&T Communications of Virginia, Inc. v. Bell Atlantic, Inc.*, 197 F.3d 663 (4th Cir. 1999); *see also* Cox Petition, Exhibit 6 at 4.

[78] Collins Direct at 13-14; Tr. at 1037-38 (Collins).

[79] Tr. at 1025-26 (Collins).

[80] *Id.*

CLEC-imposed transport costs.[81] Despite this claim, Verizon has offered no evidence that Cox has charged it unreasonable transport fees at any time, and has, in fact, attested to the contrary.[82] Further, Verizon has conceded that mid-span fiber meets solve the bulk of Verizon's cost concerns.[83] Undisputed language in the proposed agreement provides for mid-span meets, and there is no evidence that Cox ever has resisted the creation of a mid-span meet where appropriate.[84] Indeed, Cox and Verizon have operated with a mid-span meet under their current agreement, and agreed-upon language in the new agreement provides for additional mid-span meets where they are needed.[85]

Given the state of the law and the record of this proceeding, Verizon has failed to square its reciprocal collocation proposal with either the Communications Act or the reality of the relationship between Cox and Verizon in Virginia. AT&T's witness, E. Christopher Nurse, pointed out in his testimony that the New York Commission dismissed a similar reciprocal collocation proposal in less than a sentence.[86] The Commission should spend little more time with Verizon's proposal here.

D. Verizon Cannot Require Cox to Interconnect via Direct Trunking. [Issue I-4]

The parties' next disagreement concerns when Cox will implement direct end office trunking rather than interconnection at the Verizon tandem. Verizon is seeking conversion when traffic to an individual end office reaches the equivalent to a single DS-1 at *any* time. Cox has

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[81] Albert/D'Amico Direct at 28.
[82] Cox Exhibit 22.
[83] Tr. at 1270 (Albert) (stating that enforceable mid-span meet provisions would eliminate the need for reciprocal collocation).
[84] *Id.* at 1270-71 (Albert).
[85] *Id.* at 1022 (Collins), 1126, 1269 (Albert).
[86] AT&T Exhibit 10, Rebuttal Testimony of E. Christopher Nurse on Behalf of AT&T at 3 (citing Order Resolving Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc. TCG New York Inc. and ACC Telecom Corp Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095 at 81 (issued and effective July 30, 2001).

offered to implement direct trunking when traffic reaches the level of three DS-1s over a three month period, an accommodation that would require Cox to implement direct trunking at less than ten percent of the capacity of typical Cox trunk facilities. The Verizon proposal violates Section 251(c)(2) of the Communications Act and the Commission's rules. Further, Verizon has not demonstrated that there is any reason to adopt such a low threshold for conversion. Consequently, the Commission should adopt Cox's compromise proposal.

First, Verizon's proposal is in direct violation of the Commission's rules and Section 251(c)(2). As described above, Section 51.305(a)(2) requires an ILEC to provide interconnection at any technically feasible point, and specifically includes tandem switches among those points.[87] Further, the Commission has held that it is permissible for a CLEC to have a single point of interconnection in a LATA if it so desires.[88] Unless an ILEC demonstrates that interconnection at a particular point is technically infeasible, it is not permitted to deny requests for interconnection at that point.

Verizon has made no such demonstration. In fact, Verizon has shown the opposite: when tandems exhaust, Verizon augments their capacity when possible and then adds new tandems when the absolute capacity limit is reached.[89] Although adding new tandems has costs, doing so is routine, and in fact Verizon East has installed 24 tandems over a period of no more than the last five years.[90] Moreover, Verizon receives substantial revenues from CLECs and other parties for use of its tandem switching capabilities, so Verizon is not financially

[87] 47 C.F.R. 51.305(a)(2); *see also Local Competition Order,* 11 FCC Rcd at 15608 (minimum points of interconnection include trunk interconnection at ILEC tandem).
[88] *Kansas/Oklahoma Order*, 16 FCC Rcd at 6364-66.
[89] Albert/D'Amico Direct at 38; Tr. at 1102-03 (Albert) (describing process of addressing exhaust of individual tandems).
[90] Albert/D'Amico Direct at 38; Tr. at 1283-86 (Albert).

disadvantaged by third party interconnection.[91] In other words, it is plain that, even when tandems exhaust, tandem interconnection remains technically feasible. Consequently, Verizon is not entitled to deny tandem interconnection at any level to Cox or any other CLEC.

Even if Verizon were permitted to limit the extent of tandem interconnection, the evidence shows that there is no basis for its proposal to require direct interconnection by CLECs when traffic to an end office reaches the DS-1 level, even momentarily.[92] First, the evidence does not show that there is any problem. The increase in the number of tandems in the Verizon East territory – from 66 to 90 over a five year period – is not meaningfully different than the increase in Verizon East's traffic level over the same period.[93] If rates of increase of the number of tandems and of Verizon's traffic are roughly equivalent, then there is no reason to impose the costs of reducing tandem exhaust on CLECs.

Nevertheless, Verizon's solution to its purported problem rests entirely with CLECs. The testimony establishes that Verizon intends to impose the DS-1 threshold only on CLECs and has not imposed it, or any equivalent, on CMRS providers, other ILECs or interexchange carriers, even though these other carriers collectively are responsible for nearly twice as many tandem trunks as CLECs.[94] Verizon's sole reason for singling out CLECs is a claim that CLECs are

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[91] Collins Direct at 17; Cox Exhibit 15 (showing revenues of $10 million over the last 18 months). Of course, to the extent Verizon has costs it is not recovering, it is entitled to seek increases in its tandem switching rate to cover those costs. Tr. at 1291-93 (Albert).

[92] Verizon's witness testified at the hearing that the language at issue required direct end office interconnection only when the DS-1 level was exceeded over the period of a month. Tr. at 1185 (Albert). That, however, is not what the Verizon proposal says. Instead, it requires direct interconnection if traffic "exceeds the CCS busy hour equivalent of one (1) DS-1 at any time." The one month provision applies only to cumulative traffic levels of 200,000 minutes or more. November JDPL, Network Architecture, at 29-30. Even if Verizon's witness had been correct, however, and as described below, a one-month period is insufficient to account for spikes in network traffic.

[93] Albert/D'Amico Direct at 38 (growth in tandems over five years); Cox Exhibit 13 (number of tandems in place); Cox Exhibit 11 (showing Verizon growth rates according to Commission statistics). While Mr. Albert contended that the tandem growth data in his prefiled testimony should not have been over the period from 1996 to 2001, that in fact is what the testimony says. Tr. at 1283-86 (Albert). Further, despite an invitation to do so, Verizon did not provide any additional data to show that the relevant period was shorter.

responsible for a disproportionate amount of the growth in tandem trunks, although Verizon has not presented any usable data to prove this claim.[95] Even if it is true, however, this theory does not explain why Verizon is discriminating against CLECs, because it is evident that enforcing the one DS-1 limit against CLECs, while not enforcing it against other carriers, will not eliminate the possibility of tandem exhaust. All it will do is delay it somewhat.[96]

The evidence shows that, in any event, Verizon should look elsewhere to reduce the frequency of tandem exhaust. There are at least two solutions that Verizon can employ, including one that already is part of Verizon's interconnection agreement with Cox. First, Verizon can increase its own level of direct trunking to Cox. Verizon testified that it would be interested in doing so if that option were available, and it already is available under the agreed-to provisions of the Cox-Verizon contract.[97] Second, Verizon can seek to reduce the number of trunks interconnected with its tandems by eliminating underutilized trunks. Verizon testified that it has not been successful in reducing underutilization to this point, even though doing so would free up tandem capacity and increase the lifespan of tandems that otherwise would exhaust.[98]

Cox's own proposal also will reduce the need to add new tandem capacity. Rather than proposing language that would permit Cox to send all of its traffic through Verizon tandems, Cox has proposed to implement direct trunking whenever its traffic exceeds the level of three

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[94] Tr. at 1276 (Albert); Cox Exhibit 12 (proportion of tandem trunks from each category of carrier); Cox Exhibit 14 (direct trunking requirements for IXCs).

[95] Tr. at 1276 (Albert). Even claims of rapid CLEC growth are deceptive. A growth rate of 100 percent is not meaningful if it starts from a small base. For instance, growth from one trunk to two would be 100 percent growth. Growth rates inevitably level off as time goes on, and tandem trunk growth also will level off as CLECs can connect more calls between their own customers. Further, given the current status of the CLEC market, it is unlikely that the growth Verizon has experienced will continue in the near future.

[96] Tr. at 1420 (Albert).

[97] Tr. at 1279 (Albert); Cox Petition, Exhibit 2 at Section 5.2.4 (contract language permitting Verizon to establish direct trunks).

[98] Tr. at 1526-27 (Albert).

DS-1s for a period of three months.[99] As Dr. Collins explained, this represents a fair compromise between the standards used to engineer Cox's network and the traffic level proposed by Verizon.[100] Because of economies of scale, Cox normally constructs its facilities in increments of one DS-3, or 28 DS-1s.[101] The breakeven point for constructing a new DS-3 normally would be a level of ten DS-1s or more.[102] Nevertheless, in an unreciprocated effort to resolve this issue Cox has offered to compromise and implement direct trunking when the traffic level to an end office is far less than that. As Verizon's witness admitted, this compromise will, in fact, reduce the need for additional tandem facilities.[103]

Cox's proposed language also is more reasonable than Verizon's for a second reason. Verizon's language contains a hair-trigger provision that would require direct trunking if the level of traffic to an end office exceeded the DS-1 level at any time.[104] This would mean that direct trunking would be required even if the increase in traffic resulted from a one-time event, such as a contest or promotion by a Cox or Verizon subscriber. Single events also could force direct trunking under the second prong of Verizon's test, which applies if traffic to an end office exceeds 200,000 minutes in any month. Although Verizon did not provide any testimony on this point, it is difficult to believe that Verizon would install new trunks between its own end offices solely on the basis of a single month's traffic.

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[99] Cox Petition at 13; Collins Direct at 19

[100] Cox's engineering standards are consistent with modern telephone network engineering. Collins Direct at 15-16; Tr. at 1427-28 (Talbott) (describing modern engineering standards). Verizon, however, set its trunking standards decades ago, and has not revisited them for at least ten years. Tr. at 1421 (Albert) (". . . we've used it for so long it's kind of like breathing").

[101] Collins Rebuttal at 19.

[102] Tr. at 1421 (Albert), 1427-28 (Talbott), 1422-24 (Collins).

[103] Tr. at 1429 (Albert) (Three DS-1 level somewhat reduces capacity constraints).

[104] November JDPL, Network Architecture, at 29-30 (direct interconnection required if traffic "exceeds the CCS busy hour equivalent of one (1) DS-1 at any time").

In contrast to Verizon's approach, Cox has proposed that the threshold for direct trunking be based on three months of traffic. Adoption of this threshold will ensure that transitory spikes in traffic do not force construction of unnecessary facilities between Cox and Verizon. This approach is more reasonable than Verizon's because it will ensure that direct trunking occurs as traffic grows over time, thus indicating that traffic levels will be sustained, rather than as the result of one-time events.

E. There Is No Basis to Require Cox to Provide Verizon's Outbound Forecasts. [Issue I-7]

The forecasting issue is straightforward. Cox has proposed that each party be responsible for its own outbound forecasts, while Verizon has argued that Cox should be responsible for forecasting the traffic from both parties. Cox recognizes that both parties are co-carriers, and that each has the best understanding of its own traffic flows. Cox's proposal is consistent with the language in every other interconnection agreement Cox has negotiated with CLECs, CMRS providers, other ILECs, and other Verizon affiliates, including Verizon South in Virginia.[105] Verizon's proposal is inconsistent with the way it treats other carriers and would impose Verizon's engineering costs on Cox. Consequently, the Cox proposal should be adopted.

First, the obligation that Verizon seeks to impose on Cox is one that it does not impose on other classes of carriers. The evidence shows that ILECs, start-up CLECs and IXCs are not required to provide Verizon's outbound forecasts.[106] Verizon's decision not to impose these additional forecasting requirements on start-up CLECs for the first full year of operations is particularly telling: While Verizon claims that it is unable to predict its outbound traffic to Cox,

[105] Collins Direct at 27.
[106] Cox Exhibit 16 (ILECs); Tr. at 1477-79 (Albert) (no inbound forecasts by ILECs, start-up CLECs or IXCs).

a start-up CLEC will have even less predictable traffic levels, in part because Verizon cannot know whether the start-up will target business or residential users, or will have balanced or unbalanced traffic. Verizon provides no basis for this discrimination.

However, Cox has even less information than Verizon concerning how Verizon's own outbound traffic will change. Verizon has not offered to provide any of the data that would be necessary for Cox to prepare Verizon's outbound forecasts.[107] As Dr. Collins explained in his testimony, Cox would need data concerning, among many other things, switch usage and plans for customer promotions from Verizon before Cox could begin to provide Verizon's forecast.[108] In addition, Cox does not know the design of Verizon's network.[109] In the absence of that data, all Cox could do would be to provide Verizon's forecast based entirely on trends, something Verizon already can do for itself.[110] In that context, it is unsurprising that Verizon told the Commission that, once it gets a CLEC's forecast, Verizon then recalculates it using Verizon's own assumptions and data, and may disregard the CLEC forecast altogether.[111]

Moreover, even if Cox could prepare an accurate forecast of Verizon's outbound traffic, Cox's costs to do so would be substantial. Forecasting Verizon's outbound traffic also would require diversion of Cox engineering resources that could better be used to plan and operate Cox's network.[112] Verizon, of course, has not offered to pay Cox for this service, but assumes that Cox will bear the entire cost itself. This is particularly remarkable because Verizon will not

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[107] Although Verizon's witness suggested that Verizon might provide "DIXC" information to Cox, Verizon has not modified its proposal to include that information. Tr. at 1473-74 (Albert); November JDPL, Network Architecture, at 30

[108] Collins Direct at 26-27; Collins Rebuttal at 39-40.

[109] For example, Cox was unaware prior to the hearing that the Harpersville central office was a Verizon local tandem. Tr. at 1324-25 (Albert). This fact plainly affects the volume of traffic coming to Cox from that office.

[110] Tr. at 1554 (Collins).

[111] Tr. at 1541-43 (Albert).

[112] Collins Direct at 27.

perform any service for Cox or any other CLEC without charge, and certainly would refuse to perform another carrier's basic network planning tasks for free.

Third, the record shows that Verizon has all the data necessary to forecast its own traffic. In addition to the historical traffic data that Cox would use to make a trend-based forecast, Verizon has crucial information regarding its outbound traffic not available to Cox: measurements of outbound traffic that exceeded the capacity of Verizon's trunk groups, that is "overflow" measurements.[113] Further, only Verizon knows what its own plans are, including its expected customer growth and new marketing plans.[114] While Verizon claims that Cox alone knows the information concerning Cox's business plans, in fact Cox already has agreed to provide Verizon with information concerning expected changes in Cox's traffic patterns.[115] Indeed, Verizon's testimony establishes that it has everything it needs to forecast its outbound traffic to Cox, because Verizon's witness indicated during the hearing that Verizon does not rely on CLEC forecasts. Rather, Verizon modifies the forecasts based on its own internal data, and sometimes even ignores them, when determining how it will accommodate needs for new facilities.[116] A telling indication of Verizon's disregard for the reliability of CLEC forecast is Verizon's testimony that it will not even commit to making enough facilities available to meet a CLEC's forecast.[117] In this context, it is difficult to understand why Cox, or any other CLEC, should be required to expend resources for a forecast that likely will be ignored.

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[113] Collins Rebuttal at 39.
[114] Collins Direct at 26-27; Collins Rebuttal at 41; Tr. at 1472 (Albert).
[115] Albert/D'Amico Direct at 21 (Verizon does not know Cox's plans); Collins Direct at 27 (Cox will provide warnings of expected changes in traffic patterns); Cox Petition, Exhibit 2 at 36 (Section 10.3.2 of proposed agreement).
[116] Tr. at 1509-12 (Albert).
[117] Tr. at 1508-09 (Albert).

Finally, the Commission should rebuff Verizon's repeated efforts to rely on the New York collaborative. The documentation from the New York collaborative has nothing to do with traditional forecasting. It addresses only specific performance objectives that Verizon has agreed to meet under certain circumstances, and has not been formally approved by any regulatory body.[118] The guidelines also specifically state that they do not supersede any current or future interconnection agreements.[119] In other words, the New York collaborative cannot be read as imposing an obligation for CLECs to perform Verizon's outbound forecasts and therefore has, at best, limited relevance to this proceeding.

IV. Intercarrier Compensation

Cox and Verizon have two distinct intercarrier compensation issues. Issue I-5 concerns the implementation of the Commission's *ISP-Bound Traffic Order.* Cox has proposed language to specifically implement the terms of that order and to ensure that the parties will address the possibility that the order will be altered or overturned, while Verizon prefers to leave much of the implementation undefined. Issue I-6 relates to Verizon's other efforts to dictate network architecture. Verizon has proposed to alter the parties' current arrangements so that Cox could be forced to redesign its network to mimic Verizon, or to impose toll charges on calls that should be treated as local. These two issues are related, however, in that in both cases Verizon is seeking to alter or limit its intercarrier compensation obligations, with utter disregard for Cox's co-carrier status. The Commission should rebuff these attempts and adopt Cox's proposed language for both issues.

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[118] Tr. at 1488 (Albert).
[119] Cox Exhibit 18 at 18-8 ("These guidelines in no way supersede any established or future Interconnection Agreements between Bell Atlantic and individual CLECs").

A. The Commission Should Require Specific Implementation of the Requirements of the *ISP-Bound Traffic Order.* [Issue I-5]

Both Cox and Verizon agree that their interconnection agreement should contain language implementing the Commission's *ISP-Bound Traffic Order.*[120] Cox and Verizon do not agree, however, on how that order should be implemented. Cox proposes language to fully implement the order, so as to avoid the disputes that have characterized ISP-bound traffic issues over the last four and a half years. Verizon, on the other hand, has proposed a vague template that is almost certain to lead to additional disputes and, further, proposes that it be given special audit rights as to ISP-bound traffic. The Verizon proposal is consistent with its theory that it should be subject only to its own interpretation of "applicable law," with no concern for the public interest.[121] Consequently, the Cox proposal should be adopted.

First, the Commission should be wary of any proposal that does not explicitly spell out the rights and obligations of the parties under the *ISP-Bound Traffic Order.* Explicit delineation of the parties' rights would be unnecessary if the order had described all of the relevant details of compensation, but the Commission correctly left it to the parties to individual interconnection agreements to find the best ways to implement that decision.[122] For instance, as Verizon's witness acknowledged, the *ISP-Bound Traffic Order* does not set specific rates, but merely sets caps on compensation; does not provide specific details on how to calculate whether traffic imbalances exceed the 3:1 ratio; and does not specify whether the same rates should be applied to tandem and end office termination.[123]

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[120] Collins Direct at 20-21; Direct Testimony of Steven J. Pitterle and Peter D'Amico, Intercarrier Compensation, at 5 ("Pitterle/D'Amico Direct").
[121] Tr. at 38-39 (Faglioni), 134, 145, 149 (Antoniou).
[122] *ISP-Bound Traffic Order,* 16 FCC Rcd at 9189.
[123] *Id.* at 9190-91 (discussing rate caps), 9187-88 (discussing 3:1 ratio); Tr. at 1757-58, 65 (Pitterle).

Although Verizon apparently agrees that, for instance, the rate should be set equal to the rate cap in Virginia, and that there should not be any difference between charges for tandem and end office termination, it nevertheless would prefer to leave these issues open for further discussions between the parties.[124] The Commission should not send the parties down this path. The history of intercarrier compensation issues compellingly demonstrates that it would be unwise to assume that Cox and Verizon will agree on how to implement the *ISP-Bound Traffic Order*. As the order explains, the Commission was required to address these issues because ILECs and CLECs have been disagreeing about the treatment of ISP-bound traffic for years.[125] In fact, Cox was forced to obtain an order from the Virginia SCC to enforce its right to compensation from Verizon for ISP-bound traffic under the prior agreement.[126] The Commission should not assume that, in the absence of specific language, the parties will be able to work together on this issue at this late date.

Indeed, the evidence shows that Verizon's approach to ISP-bound traffic is not to work issues out with other parties, but to impose its own interpretations. On May 14 of this year, less than three weeks after the *ISP-Bound Traffic Order* was released, Verizon sent letters to Cox and other CLECs in Virginia, asserting that the order modified the terms of existing agreements and attempting to impose on those CLECs its own interpretations of the 3:1 ratio and of the applicable compensation rate.[127] While Verizon's witness asserted at the hearing that there had not been sufficient time for Verizon to make a contract proposal to Cox on these issues,

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[124] Tr. at 1761-64 (rates), 1777-78 (tandem and end office termination), 1765-67 (preference for further discussions) (Pitterle).
[125] *ISP-Bound Traffic Order,* 16 FCC Rcd at 9153-56; *see also* Collins Direct at 21.
[126] PUC 970069 Final Order, Virginia State Corporation Commission (Oct. 24, 1997).
[127] Verizon Exhibit 69 (describing May 14 letter and stating that Cox, WorldCom and AT&T all "have had their bills adjusted" in accordance with Verizon's calculations).

Verizon's action of May 14th provides compelling evidence that this was not the case.[128] If Verizon had time to develop its unilaterally-imposed methodology for calculations under the *ISP-Bound Traffic Order*, it certainly had time to share that methodology with Cox through the negotiations that were held on this issue and to determine whether Cox agreed with it. Verizon's failure to do so demonstrates that the Commission should not trust that the open-ended approach advocated by Verizon will lead to anything but further disputes – disputes that ultimately will have to be resolved by this Commission.

Even without considering the likely disagreements that would arise under Verizon's language, Cox's proposal is the more reasonable of the two. Unlike Verizon's proposal, Cox addresses the specifics necessary to implement the *ISP-Bound Traffic Order.* Among other things, it includes a methodology for calculating the 3:1 ratio, and sets specific rates that apply to both end office and tandem termination.[129] Inclusion of these specifics ensures that neither party will be able to dispute the important elements of the compensation regime.[130] This is important because there already is evidence that Verizon and Cox will have different interpretations of the *ISP-Bound Traffic Order.*[131] Moreover, Verizon's witness agreed that Cox's proposals for these provisions were reasonable.[132]

The Commission also should adopt Cox's proposal for a specific change of law provision governing ISP-bound traffic. Again, the history of this issue demonstrates that there are likely to

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[128] Tr. at 1769 (Pitterle) (time between *ISP-Bound Traffic Order* and date of hearing was not sufficient for Verizon to develop specific proposal for negotiation).
[129] November JDPL, Intercarrier Compensation, at 10-11; Collins Direct at 20-21.
[130] Cox's proposed language leaves blank the baseline amounts used to calculate the growth limits for compensation. Unlike the issues raised by Verizon's omissions, filling in these blanks will not require negotiation. Rather, the parties simply will have to calculate the growth limits based on the relevant data from their records of traffic exchanged during the first quarter of 2001.
[131] Tr. at 1691-93 (Ball); Tr. at 1700 (Ball).
[132] Tr. at 1765, 1865 (Pitterle).

be disputes if the *ISP-Bound Traffic Order* is overturned or modified by the courts.[133] Inclusion of a specific change of law provision ensures that there will not be a dispute over whether changes in the regulation of compensation for this traffic must be addressed by the parties. Outside of stating that it "sees no reason to incorporate a change of law provision unique to this issue," Verizon provides no support for its position.[134] In the absence of any good reason to support Verizon's position, the Commission should adopt Cox's language.[135]

Finally, the Commission should reject the additional audit provision inserted in Verizon's language. This provision should be rejected for two distinct reasons. First, Verizon has all the rights it needs to determine if Cox is reporting traffic properly. The undisputed portions of the agreement contain an audit provision that explicitly gives Verizon the right to audit Cox's traffic to determine if the proper rates are being charged.[136] Verizon can conduct these audits twice a year, or more often if Verizon uncovers discrepancies, and the audit provision includes the right to inspect any data necessary to determine if Verizon is being billed properly.[137] If, by chance, the general audit provision was not sufficient, the *ISP-Bound Traffic Order* makes it clear that the Virginia SCC or the Commission would have the authority to require Cox to provide any data

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[133] Collins Direct at 21.

[134] Rebuttal Testimony of Steven J. Pitterle and Peter D'Amico, Intercarrier Compensation, at 8 ("Pitterle/D'Amico Rebuttal"). Verizon's only substantive responses on this issue relate to a provision in the WorldCom and AT&T proposals that does not appear in the Cox proposal. *Id.* (discussing retroactivity provision).

[135] During cross examination, Verizon argued that the general change of law provision would cover any court action affecting the *ISP-Bound Traffic Order.* Tr. at 1791-92 (Pitterle). To the extent the Commission agrees with this assessment, it should include an explicit statement to that effect in the order in this proceeding. Otherwise, Verizon could later argue that the general change of law provision did not address that contingency.

[136] Cox Petition, Exhibit 2 at 22 (Section 5.7.5 of proposed agreement).

[137] *Id.* Mr. Pitterle argued during cross-examination that the audit provision was inadequate because it only went to the question of whether Verizon is being charged the correct rates. Tr. at 1748-50 (Pitterle). Of course, the inquiry in a state proceeding on ISP-bound traffic will be whether the appropriate rate is the ISP rate or the regular reciprocal compensation rate, a question that is determined in part by looking at the amount of traffic in each category. *ISP-Bound Traffic Order,* 16 FCC Rcd at 9187-88.

necessary to determine whether the 3:1 ratio or any other term of the order was being met.[138] Thus, there is no need for Verizon's special audit provision.

Second, Verizon's special audit provision is irretrievably flawed because it gives Verizon a unilateral, unlimited right to audit Cox's traffic, while giving Cox no parallel rights.[139] There is no good reason for Verizon to have a unilateral audit right. In fact, as Verizon's witness admitted, to the extent there were an audit provision just for ISP-bound traffic, Cox also could have reasons to conduct an audit of Verizon's traffic.[140] Verizon's provision also would allow Verizon to make burdensome audit requests at will, with no limitations on when an audit could occur or how many audits Verizon could request. Such a provision is patently unreasonable, and the Commission should reject it, along with the rest of Verizon's proposal for Issue I-5.

B. Consistent with Standard Industry Practice, Determinations of Local or Toll Status of a Call Should Be Made Using NXX Codes. [Issue I-6]

Under Issue I-6, Verizon's ostensible goal is to base compensation for calls between a CLEC and an ILEC on the "actual" originating and terminating points of those calls. In fact, this proposal is built on the theory that CLEC network architecture should be required to match ILEC network architecture. This assumption pervades Verizon's arguments, but is simply incorrect. Moreover, there would be no way to implement Verizon's proposed language even if it were adopted. Consequently, the Commission should reject Verizon's language and adopt Cox's proposal to follow the industry standard of rating calls based on the NXXs of the calling and called parties.[141]

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[138] Collins Rebuttal at 30; *ISP-Bound Traffic Order,* 16 FCC Rcd at 9188.
[139] Tr. at 1745 (Pitterle).
[140] Tr. at 1745-46 (Pitterle).
[141] Collins Direct at 7; Tr. at 1709, 1719 (Collins).

Verizon's case for its proposal is built on a hypothetical involving a call from a Verizon customer in Roanoke to a CLEC customer using an NXX assigned to Roanoke. In Verizon's hypothetical, such a call is a "virtual FX" call (and not subject to reciprocal compensation) if the CLEC does not physically deliver the call to or through Roanoke, but is a "local" call (and therefore eligible for reciprocal compensation) if the CLEC delivers the call to or through Roanoke, even if the CLEC then returns the call to the CLEC switch for delivery to the customer.[142] Verizon also contends that calls made to its own foreign exchange ("FX") customers should be treated as local for compensation purposes if the originating and terminating NXX codes are in the same local calling area, regardless of the customers' actual locations or where the customers' calls are handed off.[143]

The fallacies of Verizon's position are evident from this restatement of the hypothetical. Although Verizon argues that it is responsible for transporting toll calls in its "virtual FX" scenario, its transport costs are unaffected whether the call terminates at the CLEC switch, is sent back to a CLEC customer's premises in Roanoke or is sent back to Roanoke and returned to the CLEC switch for further transport to the customer's location.[144] Nevertheless, Verizon argues that the "virtual FX" scenario is "abusive," while the other two are not.[145] Verizon's argument,

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[142] Pitterle/D'Amico Direct at 6-7; Tr. at 1825-26 (Pitterle).
[143] Tr. at 1827-29 (Pitterle) (describing Verizon's practices concerning traditional FX service). Under Verizon's "actual" originating and terminating point theory, this should not be the case. Although Verizon provides no reason for this distinction, Verizon may wish to continue to treat traditional FX service as local in nature because Verizon has a significant amount of traditional FX traffic, and wishes to continue to receive reciprocal compensation, rather than foregoing that compensation or even having to split access revenues with CLECs.
[144] Tr. at 1238 (D'Amico) (agreeing that Verizon does not incur any toll charges for transport to CLEC switch). In addition, the costs actually incurred by Verizon for transport to CLEC switches are minimal. Tr. at 1238-39 (Albert) (Verizon generally uses excess capacity on existing routes when transporting calls to CLECs); *see also supra* Section III(A)(2) (Verizon has not made showing that it incurs any meaningful costs to transport CLEC calls).
[145] Under Issue I-1, Verizon has proposed that it not be responsible for the costs of transporting calls to the CLEC switch under certain circumstances, but has not argued that reciprocal compensation should not be paid in the second and third scenarios. As described above, the Commission should, in any event, reject Verizon's Issue I-1 proposals. *See supra* Section III(A).

in effect, is that for a CLEC to be eligible for reciprocal compensation, the CLEC must incur unnecessary costs to duplicate Verizon's network architecture, something that even Verizon's witness agrees is inefficient.[146]

As AT&T witness Schell demonstrated during the hearing, Verizon's position also is inconsistent with how Verizon treats its own FX service.[147] When Verizon offers FX service, it connects the customer directly to the distant end office where the NXX resides (using facilities from the customer's serving wire center) and then treats calls to that number from the same local calling area as the NXX as local for all purposes, including intercarrier compensation. Under Verizon's theory, if a CLEC did exactly the same thing, the call would be treated as a toll call, even though, as Mr. Schell described, "[t]he subscriber hasn't gone anywhere."[148] This differential treatment, based solely on which carrier is serving the customer, makes no sense.

Verizon argues that it is reasonable to differentiate between the two scenarios because Verizon's FX customer compensates Verizon for the transport cost Verizon faces, but Verizon gets no compensation for its transport cost when it delivers a call to a distant CLEC switch.[149] This argument compares apples and oranges. Verizon's minimal costs of transporting traffic to a CLEC switch do not arise from the nature of the service provided to the CLEC's customer, but from the distance between the CLEC switch and the relevant Verizon switch. Verizon's compensation from its FX customer, on the other hand, is for transport within Verizon's network that is provided as an additional service to that customer. Those charges are equivalent to Cox's

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[146] Tr. at 1822-23 (Pitterle).
[147] Tr. at 1898-1900 (Schell).
[148] Tr. at 1900 (Schell)
[149] *See, e.g.,* Pitterle/D'Amico Rebuttal at 10, 11.

charges to its own customers for the services they buy from Cox, not to intercarrier charges like reciprocal compensation.

These significant logical flaws are not the only reason the Commission should adopt Cox's language rather than Verizon's for this issue. Cox's proposal to rely on NXX codes is consistent with existing industry standards and, in fact, there is no other reliable way to determine whether a call should be treated as local or toll in nature.

First, longstanding industry practice is to use NXX codes both to rate and route calls. As Dr. Collins explained, use of NXX codes is "implemented in all standard billing software and uses the widely-available information published in the Local Exchange Routing Guide[.]"[150] This not only is the system that Cox uses, but it also is used by Verizon for nearly every purpose related to rating calls. Indeed, even when discussing other issues in this proceeding, Verizon's witnesses repeatedly stated that the *only* mechanism used by Verizon to determine the status of a call was comparing the originating and terminating NXX codes.[151] The testimony also establishes that Verizon uses NXX codes to determine how FX calls should be rated, and that Verizon makes no effort to distinguish calls to its FX customers from other calls when it receives traffic from Cox.[152] Thus, adopting Verizon's proposal would require both parties to abandon the well-established mechanism they currently use to rate calls.

It would be difficult enough to abandon NXX-based call rating if there were an alternative available. The testimony establishes, however, that there is no other way to rate calls using current technology. As Dr. Collins explains, in a point that was unchallenged during cross-examination or in Verizon's prefiled testimony:

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[150] Collins Direct at 24.
[151] *See, e.g.*, Tr. at 1903, 1904 (Pitterle) (describing rating for meet-point billing); 115 (Gilligan); 1380 (Albert).
[152] Tr. at 1817-18 (Pitterle).

> I do not know of any technology that would permit Cox or any other carrier to make such determinations, on a call-to-call basis or otherwise. Indeed, to my knowledge, there is no industry-accepted standard for what would constitute the 'originating and terminating points of the complete end-to-end communication.' Thus, unlike Cox's proposal, which is based on well-established industry standards, Verizon's proposed language raises significant unanswered questions.[153]

This conclusion was confirmed during cross-examination. When asked if Verizon had proposed any contractual language that would assist the parties in determining the actual originating and terminating points of a call, Verizon's witness could not identify any such language.[154] Further, when asked if either the originating or terminating carrier could determine the actual terminating and originating points of a call under various circumstances, including calls through a leaky PBX, calls to and from off-premises extensions and calls to a company's local area network, Mr. Pitterle agreed that there was no way to do so.[155] Nevertheless, Mr. Pitterle also insisted that Verizon's position was that the parties should treat certain calls in each situation as local and others as toll.[156]

When pressed by the staff to describe how Verizon would determine whether particular calls were local or toll, Mr. Pitterle provided only a single example involving calls to an Internet service provider.[157] This example was notable for several reasons. In particular, it involved a series of surmises by Verizon that almost certainly would result in a dispute with the CLEC and that would appear to violate the requirements of the Commission's *ISP-Bound Traffic Order.* Even in this example, Mr. Pitterle did not explain how Verizon would determine the actual terminating points of calls to the ISP, which could be local to the caller even if the ISP's location

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[153] Collins Direct at 25.
[154] Tr. at 1811-12 (Pitterle).
[155] Tr. at 1809-11 (Pitterle).
[156] *Id.*
[157] Tr. at 1814-1815 (Pitterle).

was not.[158] Mr. Pitterle also did not provide any examples of how Cox or any other CLEC would determine the end-to-end points of calls more commonly carried by Verizon, such as FX calls, calls to leaky PBXs or calls to a company's LAN.[159] This suggests strongly that Verizon's real intent in making this proposal is to remove one more source of CLEC revenue, rather than to address a flaw in the current call-rating system. In any event, it would be entirely inappropriate for the Commission to adopt this provision in the absence of a reliable way for CLECs to demonstrate that traffic sent to Verizon also fails the "end-to-end" test and is not subject to reciprocal compensation.

In addition, to the extent Verizon believes CLECs are inappropriately assigning NXX codes, it has remedies available to it other than interconnection agreement provisions that cannot be enforced. As Verizon's own filings demonstrate, state agencies act promptly when they believe NXX codes are being used improperly.[160] On the other hand, an arbitration proceeding, which sets contractual language rather than evaluating compliance with regulatory requirements, is not an appropriate forum for addressing such issues. This is particularly the case when, as here, Verizon has not presented any evidence that Cox or any other party has engaged in the behavior it says should be prohibited.[161]

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[158] This would be the case, for instance, if a Verizon customer in Roanoke called an ISP to look at the web page of a local college or the *Roanoke Times*. To the extent that Mr. Pitterle was suggesting that the inquiry into the end-to-end points of the call should stop once it reaches the ISP, that would be inconsistent with his testimony concerning calls to a corporate LAN or leaky PBX, in which he contended that the entire path of the communication was relevant to the inquiry. Tr. at 1805-11 (Pitterle).

[159] In fact, as described above, Mr. Pitterle stated that there was no way for either the originating or terminating carrier to know whether these types of calls were local or toll under Verizon's language. Tr. at 1812-13 (Pitterle).

[160] Pitterle/D'Amico Direct at 9-12.

[161] Verizon's prefiled testimony contains the naked allegation that Cox engages in this practice. *Id.* at 6. However, Verizon has made no attempt to provide evidence that would support this assertion, and the Commission should ignore it as an unsubstantiated allegation.

Finally, in light of the undisputed evidence that there is no established mechanism for determining the actual end-to-end points of a call, the Commission should recognize that Verizon's proposed language would be nothing more than an opportunity for endless disputes and litigation concerning intercarrier compensation, all of which would be harmful to CLECs. In such disputes, Verizon's pattern is clear: it decides unilaterally that traffic is not subject to compensation (or is subject to reduced compensation), ceases payment, then waits to see if the CLEC will be able to obtain a final order requiring payment to be made. If the CLEC lacks the resources to engage in a full scale dispute, then Verizon never pays at all.

This is precisely how Verizon acted when the initial disagreements concerning ISP-bound traffic arose. It also is what Verizon did when the *ISP-Bound Traffic Order* was released: it issued the May 14 letter to all Virginia CLECs, performing its own calculations of the 3:1 ratio and the applicable rates; attempted to impose those calculations on all carriers, even those with existing interconnection agreements; and then waited to see if any CLECs would complain.[162] There can be no doubt that, if Verizon's language is adopted for this issue, it will follow the same approach. It might even cut off all reciprocal compensation until CLECs prove, to Verizon's satisfaction, that their calls meet Verizon's impossible-to-implement end-to-end test. The Commission should take heed of the lessons of the last five years and prevent this result by adopting Cox's proposed language for this issue.

[162] *See* Verizon Exhibit 55 (May 14 letter); Verizon Exhibit 69 (describing Verizon's actions and indicating that it will take no further action unless a CLEC invokes dispute resolution procedures); *see also State Activities, E-Spire Filed Complaint with MD PSC Against Verizon*, COMM. DAILY, Nov. 13, 2001, at 6 (describing action against Verizon for failure to pay reciprocal compensation after effective date of *ISP-Bound Traffic Order*).

V. Business Process – Verizon Cannot Be Permitted to Monitor Cox's Use of CPNI. [Issue I-8]

Verizon has proposed contract language that would give Verizon the right to monitor Cox's access to and use of customer proprietary network information ("CPNI").[163] Verizon has not shown that it needs to monitor Cox's use of CPNI, and there is no reason for Verizon to take on an enforcement role that belongs to regulators. Moreover, Verizon's proposed language would create significant competitive risks. The Commission should accordingly adopt Cox's proposal regarding monitoring CPNI usage.

First, Verizon has failed to produce any evidence that there is a need for its monitoring proposal.[164] Verizon concedes that it has received no complaints regarding Cox's use of Verizon CPNI and that it has not been sanctioned by any regulatory body for Cox or any other CLEC's use of Verizon CPNI.[165] Thus, there is no indication that there is even a problem to be solved.

Nevertheless, Verizon claims that it could be subject to liability if Cox misuses CPNI obtained through Verizon's OSS.[166] This argument is specious. Cox has an independent duty under Section 222 of the Act to safeguard CPNI.[167] Further, undisputed provisions of the interconnection agreement also commit Cox to the protection of CPNI obtained from Verizon.[168] Therefore, any liability for misuse of CPNI would be Cox's responsibility, not Verizon's.[169]

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[163] See November JDPL, Business Process , 3-4,
[164] Verizon did cite a single example where it was able to detect and stop CPNI misuse, but it did not elaborate the facts of that case. Tr. at 2577-78 (Langstine).
[165] Cox Exhibit 29 (no complaints); Cox Exhibit 30 (no sanctions); Tr. at 2545-46 (Langstine).
[166] Verizon Answer at 201.
[167] 47 U.S.C. § 222. Verizon concedes that Cox is under the same obligation to protect CPNI as Verizon. Tr. at 2544-45.
[168] Cox Petition at 19; *see also* Tr. at 2531 (Langstine).
[169] Cox Petition at 19; Collins Direct at 29; Collins Rebuttal at 43.

Even if Verizon were somehow held liable for Cox misuse of CPNI, Verizon is further protected from liability by agreed-upon indemnification provisions in the new agreement.[170]

The only other justification provided by Verizon for monitoring Cox's CPNI use is Verizon's obligation to maintain the integrity of its OSS interfaces.[171] Even if this were correct, this claim would support only the monitoring of OSS, not the monitoring of CPNI. Indeed, none of Verizon's testimony provides any independent factual support for its desire to monitor CPNI.

Further, Verizon's proposed contract language arrogates to Verizon an enforcement role that belongs to regulatory bodies such as the Commission.[172] While Verizon claims that Section 222's mandate that carriers safeguard CPNI in their possession *requires* it to monitor Cox's CPNI access and use, nothing in that section deputizes interconnecting carriers to enforce those requirements on their co-carriers.[173] Verizon cannot even explain how it would use this authority, saying on the one hand that it would seek guidance from regulators, but also saying that it would act on its own, without any such guidance.[174]

In any event, it would be extraordinarily risky to give Verizon the authority to monitor its competitors' use of CPNI. Although Verizon claims that it intends to monitor only the volume of Cox's CPNI queries, it concedes that nothing in its proposed language would keep it from monitoring the content.[175] In fact, Verizon's proposal contains no standards or limits at all, which means that Verizon would be free to monitor whenever or whatever it wants.[176] Thus, Verizon's proposal would give Verizon the ability to review Cox's confidential business

[170] Cox Petition at 19; Collins Direct at 30.
[171] Tr. at 2255-56.
[172] Cox Petition at 19; Collins Direct at 29; Collins Rebuttal at 43, 45.
[173] 47 U.S.C. § 222; Verizon Answer at 201; Langstine Direct at 2-3; Collins Direct at 29; Collins Rebuttal at 43.
[174] Cox Exhibit 25 (Verizon will seek advice); Tr. at 2540-41 (Langstine) (Verizon will use its own judgment).
[175] Tr. at 2546-47, 2549. Moreover, the volume monitoring that Verizon claims it wishes to do is not very well-designed as a means for ferreting out CPNI violations. Collins Rebuttal at 43-44.
[176] Collins Rebuttal at 44-45.